CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, NO. 31, PETITIONER

vs.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1930
CERTIORARI GRANTED OCTOBER 13, 1930

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, NO. 31, PETITIONER

vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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1-2 [Citation in usual form showing service on J. Edw. Keating and T. E. Bowen, filed Nov. 8, 1929, omitted in printing.]

3 In United States District Court, Southern District of California, Southern Division

No. 9630-M, Cr.

In the matter of MATEO ZAJA on habeas corpus

Complaint and petition for writ of habeas corpus and order allowing same

Filed Mar. 25, 1929

It is respectfully shown by the petition of Mateo Zaja that said petitioner is unlawfully a prisoner and unlawfully detained, confined, and restrained of his liberty by Walter E. Carr, district director of district No. 31, Immigration Service, Department of Labor of the United States of America, to wit, in the city of Los Angeles, State of California; that said imprisonment, detention, confinement, and restraint are illegal and that the illegality thereof consists in this, to wit:

I

4 That petitioner is an alien, thirty-five years of age, unmarried, and of the Dalmatian race, having been born in Arzans, Dalmatia; that the sole claim or authority by which said Walter E. Carr restrains and detains and imprisons and confines petitioner is a certain warrant issued by the Secretary of Labor of the United States, dated on or about the 20th day of December, 1928, directing the deportation of petitioner to Jugoslavia as an alien not entitled to be or remain in the United States; that prior thereto, and on or about the 4th day of October, 1928, detained was taken into custody by said Walter E. Carr without right, authority, or any warrant whatsoever and that a warrant for the arrest of your petitioner was issued and dated October 5, 1928, and issued by said Secretary of Labor of the United States; that ever since the said 4th day of October, 1928, said detained has been and still is unlawfully and illegally restrained of his liberty and under the custody of said Walter E. Carr and under the pretended authority of said warrants.

II

That the said Secretary of Labor of the United States acted unfairly, arbitrarily, and exceeded his authority and abused his discretion in issuing the order for deportation of petitioner in that there is no evidence in the record of the Immigration Service and there was no evidence adduced at the deportation proceedings to sustain any of the findings upon which said warrant of deportation is based;

that said warrant of deportation rests solely upon the following purported finding, to wit:

"That he remained in the United States for a longer time than permitted under the act of 1924 or regulations made thereunder, having entered the United States at San Pedro, California, on January 21, 1925."

That there was no evidence before said Secretary of Labor or those acting in aid or assistance of him to sustain said finding.

III

That said finding does not state facts sufficient to support or authorize the deportation of detained.

IV

That detained entered the United States on the 21st day of January, 1925, as an alien seaman, and then and there at the port of San Pedro, California, deserted his ship and entered the United States; that ever since said 21st day of January, 1925, petitioner has remained in and continuously resided in the United States and has continuously and at all time been engaged in the occupation of a seaman and has never abandoned said calling; that petitioner was not taken into custody by respondent until the 4th day of October, 1928, and that more than three years had then elapsed since the last entry of petitioner into the United States; that the provisions of section 34 of the immigration act of 1917 (8 U. S. Code 166) prohibit the deportation of petitioner.

V

That petitioner has not in his possession a copy of the immigration record or evidence applicable for the deportation proceedings against him and cannot secure said copy of proceedings and evidence to file with this petition; but petitioner stipulates and agrees that when the original records and evidence are received and presented for consideration that the same may be introduced in this proceeding as of the same force and effect as if filed herewith as part and parcel of this petition.

VI

That said Secretary of Labor of the United States acted unfairly and arbitrarily and exceeded his authority and abused his discretion in issuing said warrant for the deportation of your petitioner in that the entire proceedings, including the first warrant for the arrest of your petitioner and the hearing thereon and the proceedings thereafter, denied your petitioner a fair hearing; that said first warrant for the arrest of your said petitioner and said hearing before respondent, as aforesaid, and the proceedings thereafter are

all and singular unfair to your petitioner in each and every of the following particulars, to wit:

(a) That your petitioner was ordered deported without any evidence whatsoever to sustain the charge and findings upon which said order is based.

(b) That after said Secretary of Labor had made his order directing the deportation of petitioner, petitioner applied to said Secretary of Labor for a reopening to enable him to introduce evidence in the particulars stated in said petition, a copy of which is hereto attached, marked "Exhibit A," and by this reference made a part hereof as though set forth in full, together with the affidavit of petitioner hereto attached, marked "Exhibit B"; that no previous application for a writ of habeas corpus has been made in this matter; that respondent is threatening to deport detained within the next few days, the exact time of which your petitioner cannot ascertain, making it impossible for this matter to be held on notice; that respondent has given notice that this petition is to be presented to this court.

7 Wherefore the petitioner prays that a writ of habeas corpus issue out of and under the seal of this court, directing the said Walter E. Carr, district director of Immigration Service as aforesaid, to have the body of the said detained before this honorable court at a time and place to be in said writ specified, together with the true cause of his detention, to the end that due inquiry may be had in the premises, and your petitioner prays that this court may proceed in a summary way to determine the facts in the case and the legality of detained's imprisonment, restraint, and detention, thereupon to dispose of detained as law and justice require.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

[*Duly sworn to by Mateo Zaja; jurat omitted in printing.*]

8 Let the writ of habeas corpus prayed for issue, returnable before the court of Paul J. McCormick, at 10 o'clock a. m. on the 1st day of April, 1929; pending hearing thereon petitioner to be released on $500 bond.

Dated this 25th day of March, 1929.

WM. P. JAMES, *Judge.*

POINTS AND AUTHORITIES

Petitioner contends that the writ should issue, and in support thereof cites the following authorities:

Immigration act of 1917, section 34 (8 U. S. Code 166).
In re Lackides, 10 Fed. (2) 980.
Nagle vs. Hansen, 17 Fed. (2d) 557.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

9 *Exhibit A to complaint and petition*

In the United States Department of Labor, before the Bureau of Immigration

In the matter of MATEO ZAJA, warrant proceedings

L. A. File No. 29270/175

PETITION FOR REOPENING

Comes now the alien above named and petitions the Immigration Service to reopen the hearing in the above-entitled matter to give petitioner an opportunity to present evidence to show that he has a right to be and remain in the United States, and to give petitioner's counsel an opportunity of reargueing the case before the board of review.

Petitioner is in possession of evidence which will establish conclusively that at all times since he has been in the United States he has been engaged in the occupation of a seaman and will produce evidence showing exactly his movements at the time of arrival and his occupation from that time until the present; that at the time of the hearing petitioner was not advised of the materiality of the above evidence and did not have an opportunity to present this evidence and the particulars more fully set forth in affidavit of petitioner hereto attached.

At the conclusion of the hearing petitioner's counsel desires an opportunity to argue before the board of review that the three-year period of limitation applies to this case, and that section 3 of the immigration act of 1917 has not been repealed by the provisions of the 1924 act, in accordance with the decision of the Circuit
10 Court of Appeals for the Ninth Circuit in Nagle vs. Hansen, 17 Fed. (2d) 557, at 558.

Wherefore petitioner prays that an order be made staying the order of deportation until this petition is acted upon, the rehearing had, and the case reargued before the board of review, and further, that petitioner be allowed to introduce additional evidence material to the issue.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

Exhibit B to complaint and petition

In the United States Department of Labor, before the Bureau of Immigration

In the matter of MATEO ZAJA, warrant proceedings

L. A. File No. 29270/805

AFFIDAVIT OF MATEO ZAJA

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Mateo Zaja, being duly sworn, deposes and says that he is in possession of evidence to establish the fact that he has never been outside of the United States since his arrival on or about January 21st, 1925, and that ever since that date affiant has been engaged in his occupation as a seaman and that he has never abandoned the same;
11 that in the report of investigation upon which the warrant of arrest in petitioner's case was issued appears the following question and answer:

"Q. Have you ever worked on a ship since you landed here in San Pedro in January, 1925?

"A. No. Nobody knew me and I couldn't get a job on a ship. I went to work digging ditches and worked as a laborer on the Y. M. C. A. building."

Affiant states that he did not fully understand said question, nor its purport, and that the answer there set down is not complete.

That in truth and in fact affiant has been continuously engaged on a boat as a seaman ever since his arrival in the United States, with the exception of short periods of times when he was unable to obtain such employment.

Further affiant sayeth not.

MATEO ZAJA.

Subscribed and sworn to before me this 25th day of March, 1929.

R. S. ZIMMERMAN,
Clerk, U. S. District Court,
Southern District of California,
By B. B. HANSEN, *Deputy.*

[File endorsement omitted.]

12 In United States District Court

Writ of habeas corpus

Filed Mar. 25, 1929

The President of the United States to Walter E. Carr, Director of Immigration of the United States for the Los Angeles District, No. 31, Greeting:

You are hereby commanded to have the body of Mateo Zaja, by you imprisoned, by whatever name he shall be called, the petitioner for a writ of habeas corpus in the above-entitled case, before the above-entitled court and the honorable Paul J. McCormick, judge of said court, at the court room of said court, in the city of Los Angeles, California, on the 1st day of April, 1929, at 10 o'clock a. m., to do and receive what shall then and there be commanded in the premises, and have you then and there this writ.

Witness the honorable Paul J. McCormick, judge of the said United States District Court for the Southern District of California, Southern Division.

Dated March 25th, 1929.

[SEAL.]

R. S. ZIMMERMAN, *Clerk*,
By B. B. HANSEN.

[File endorsement omitted.]

13 Received copy of the within writ and copy of petition this 25 day of March, 1929.

WALTER E. CARR,
By JOSEPH A. CONATY,
Assistant District Director.

In United States District Court

[Title omitted.]

Return to writ of habeas corpus

Filed April 11, 1929

I, Joseph A. Conaty, acting district director of the United States Immigration Service, immigration district No. 31, at Los Angeles, California, respondent herein, for my return to the writ of habeas corpus in the above case admit, deny, and allege as follows:

I

Respondent alleges that the petitioner herein is an alien; that he is a citizen of Jugoslavia and of the Dalmatian race; that he signed on the Italian S. S. "Livenza" at Hamburg, Germany, about No-

vember, 1924, as a seaman; that he arrived at San Pedro, California, on or about January 21, 1925, on said vessel and deserted therefrom; that within sixty days after such desertion petitioner did not re-
ship from the United States but on the contrary abandoned
14 his calling as a seaman and has since continued to reside within the United States. Respondent further alleges that on the 5th day of October, 1928, the Secretary of Labor caused his warrant to be issued directing that petitioner be taken into custody and that he be given a hearing to show cause why petitioner should not be deported from the United States; that petitioner was taken into custody under said warrant and was accorded a hearing, at which time petitioner was represented by counsel, and at which hearing a competent Dalmatian interpreter was employed; that at the conclusion of said hearing respondent's counsel submitted a brief, and the entire record was thereafter transmitted to the Secretary of Labor at Washington, D. C.; that the record was reviewed and the Secretary of Labor found that petitioner was in the United States in violation of the immigration act of May 26, 1924, and caused his warrant to be issued on the 20th day of December, 1928, directing petitioner's deportation to Jugoslavia on the ground that petitioner "had remained in the United States for a longer time than permitted under the said act or regulations made thereunder." Respondent further alleges that while holding petitioner for deportation in accordance with the above warrant of deportation writ of habeas corpus was served on respondent and said petitioner was thereafter released under bond by order of this honorable court. It is impossible, therefore, for respondent to produce the body of petitioner before this honorable court at the time and place indicated in the writ of habeas corpus.

II

Respondent admits the truth of that part of allegation No.
15 I of the petition wherein it is alleged that respondent's authority for restraining petitioner is a certain warrant of deportation dated the 20th day of December, 1928. Respondent denies the allegation that such restraint under such warrant is unlawful, but alleges said warrant was issued after due hearing held in accordance with law and the rules and regulations based thereon, and that such restraint is lawful.

III

Respondent denies that part of allegation No. 2 of the petition wherein it is alleged that the Secretary of Labor acted unfairly, arbitrarily, and in excess of authority, and that he abused his discretion in issuing an order of deportation, and that there was no evidence in the record of the Immigration Service and no evidence adduced at the deportation proceedings to sustain the findings upon which the warrant of deportation was based, but alleges that the hearing which resulted in the issuance of the war-

rant of deportation was fairly conducted; that it was based on sufficient evidence to justify the deportation order; and in the entire proceeding the Secretary of Labor and those acting in aid or assistance of him acted fairly and without abusing their discretion.

IV

Respondent denies the truth of allegation No. 3 of the petition wherein it is stated that the finding did not state facts sufficient to support or authorize the deportation of petitioner. Respondent alleges that the finding does state facts sufficient to support and authorize the deportation order.

V

Respondent admits the truth of that part of allegation No.
16 4 of the petition wherein it is stated that petitioner entered the United States on the 21st day of January, 1925, and that petitioner has continued to reside in the United States since that time. Respondent denies, however, that part of said allegation wherein it is alleged that at all times since petitioner's entry on the date aforesaid he has engaged in the occupation of a seaman and has never abandoned said calling. Respondent alleges that petitioner did abandon said calling and that his status as a seaman terminated at the end of the sixty-day period immediately following petitioner's desertion of the vessel at San Pedro on the 21st day of January, 1925. Respondent admits that petitioner was not taken into custody within three years after his desertion, as aforesaid, but alleges that the desertion of petitioner and his abandonment of his seaman's status does not accord petitioner the exemption to which bona fide seamen are entitled under section 34 of the immigration act of 1917.

VI

Respondent denies that the Secretary of Labor acted unfairly, arbitrarily, and abused his discretion in issuing said warrant for deportation of petitioner, but alleges that the hearing was fair in all respects and in accordance with law and the rules and regulations based thereon. Respondent further denies that the deportation order was issued without evidence to sustain the charge and finding upon which said order was based, but alleges that the evidence was sufficient to justify the order of deportation. Respondent admits that after the Secretary of Labor had made his order directing deportation of petitioner that petitioner applied to the Secretary of Labor for a reopening of the case to enable petitioner to introduce evidence as to his right to be and remain in the
17 United States, request for which reopening is set forth in Exhibit A, attached to the petition and made a part thereof by reference, but denies that such action on the part of the Secretary of Labor was unfair.

Wherefore respondent prays dismissal of this writ of habeas corpus and further prays that the petitioner, Matteo Zaja, be remanded to said respondent for deportation in accordance with the terms of the warrant in respondent's possession.

JOSEPH A. CONATY,
Acting District Director.

[Duly sworn to by Joseph A. Conaty; jurat omitted in printing.]

18 [File endorsement omitted.]

Return to Writ Received copy of within Return this 11 day of April, 1929.

J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Petitioner.

In United States District Court

[Title omitted.]

Order re traverse, etc.

April 15, 1929

This matter coming on at this time for hearing on return of writ, Theodore E. Bowen, Esq., appearing as counsel for the petitioner, and Gwyn Redwine, assistant United States attorney, appearing as counsel for the Government, it is by the court ordered that the petition be submitted upon briefs to be filed; petitioner's brief to be
19 filed on May 10th, 1929, respondent's brief to be filed fifteen days thereafter, and petitioner's closing brief five days after the filing of respondent's brief; and by stipulation it is ordered that the petition herein filed shall be deemed a traverse to the return to the writ filed herein.

In United States District Court

Order discharging from custody

Aug. 9, 1929

The petitioner, Mateo Zaja, is discharged from custody (see Nagle, etc., v. Hansen, 17 Fed. 2nd, 9 C. C. A., P. 557), and an exception to the aforesaid decision is hereby noted and reserved for respondent.

In United States District Court

[Title omitted.]

Petition for appeal and order allowing same

Filed Nov. 8, 1929

Walter E. Carr, director of immigration of the United
20 States for the Los Angeles district, No. 31, petitioner and

appellant herein, deeming himself aggrieved by the judgment and order entered herein on August 9th, 1929, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit and prays that a transcript of record of the proceedings and papers on which said order and judgment were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

ORDER

Now, to wit, on the 8th day of November, 1929, it is ordered that the above petition for appeal be granted and that the said appeal be allowed as prayed for.

WM. P. JAMES,
United States District Judge.

Acting for Judge McCormick, who decided the case and who is in New York City.

[File endorsement omitted.]

21 Received copy of the within petition this 8 day of November, 1929.

J. EDW. KEATING,
and THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Assignments of error

Filed Nov. 8, 1929

Comes now Walter E. Carr, director of immigration of the United States for the Los Angeles district, No. 31, and presents the following assignments of error in the decision of the District Court for the Southern District of California, Central Division, as follows:

1. The court erred in granting the petition of the above-named Mateo Zaja for a writ of habeas corpus and in issuing such writ.

2. The court erred in discharging said Mateo Zaja from the custody of the appellant.

3. The court erred in holding and deciding that the above-named Mateo Zaja is not subject to deportation and is entitled to remain in the United States.

22 4. The court erred in holding and deciding that said Mateo Zaja was denied due process of law in the deportation proceedings.

5. The court erred in holding and deciding that the said Mateo Zaja did not have a fair trial in the Immigration Department proceedings.

6. The court erred in holding and deciding that the deportation proceedings were unfair because of the refusal of the Secretary of Labor to re-open the case and allow the said Mateo Zaja to produce further evidence in his behalf relative to his status as a "seaman."

7. The court erred in holding and deciding that the said Mateo Zaja was not found in the United States in violation of the immigration act approved May 26, 1924.

8. The court erred in holding and deciding that there was not sufficient evidence to support the findings made by the Secretary of Labor in said deportation proceedings.

9. The court erred in holding and deciding that the findings of the Secretary of Labor were not sufficient upon which to base the warrant of deportation.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

23 [File endorsement omitted.]

Received copy of within assignments this 8 day of November, 1929.

J. EDW. KEATING,
& THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Notice of appeal

Filed Nov. 8, 1929

To MATEO ZAJA,
Petitioner and Appellee,
And to J. EDWARD KEATING and THEODORE E. BOWEN,
Attorneys for said Mateo Zaja.

You, and each of you, will please take notice that Walter E. Carr, director of immigration of the United States for the Los

Angeles district, No. 31, the respondent and appellant, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of the above-entitled District Court, discharging said Mateo Zaja from the custody of said respondent and appellant, entered in the above-entitled cause on August 9th, 1929, and that a certified transcript of record will be filed in the said Appellate Court within thirty days of the filing of this notice.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

[File endorsement omitted.]

Received copy of within notice this 8 day of November, 1929.

J. EDW. KEATING
& THEODORE E. BOWEN,
Attorney for Petitioner.

In United States District Court

[Title omitted.]

Stipulation regarding original records and files of Department of Labor

Filed Nov. 8, 1929

It is hereby stipulated and agreed by and between Samuel W. McNabb, United States attorney for the Southern District of California, Central Division and Gwyn S. Redwine, and P. V. Davis, Assistant United States attorneys for said district, attorneys for Walter E. Carr, director of immigration of the United States for the Los Angeles District No. 31, appellant, and J. Edward Keating and Theodore E. Bowen, attorneys for the appellee herein, that the original files and records of the Department of Labor covering the deportation proceedings against the said appellee which were filed in the hearing in the above-entitled case may be by the clerk of this court sent up to the clerk of the United States Circuit Court of Appeals, Ninth Circuit, as part of the appellate record in order that said original immigration files may be considered by the Circuit Court of Appeals for the Ninth Circuit in lieu of certi-

fied copy of said records and files and that said original records may be transmitted as part of said appellate record.

Dated November 8, 1929.

SAMUEL W. McNABB,
United States Attorney,
GWYN S. REDWINE,
Assistant United States Attorney,
P. V. DAVIS,
Assistant United States Attorney,
Attorneys for Walter E. Carr.
J. EDWARD KEATING,
THEODORE E. BOWEN,
Attorneys for Mateo Zaja.

26 In United States District Court.

Order to transmit original records

Filed Nov. 8, 1929

On the foregoing stipulation of counsel it is by the court ordered that the original records in the United States Immigration Office, filed herein on the hearing of the return of the said appellant, Walter E. Carr, district director of the United States Immigration Service for the Los Angeles District, No. 31, to the writ of habeas corpus herein, be transmitted by the clerk of this court to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits in lieu of a certified copy of said records and files and that the same may not be printed.

Dated this 8th day of November, 1929.

WM. P. JAMES,
United States District Judge.

Acting for Judge McCormick, who is in New York City.

[File endorsement omitted.]

27 In United States District Court

[Title omitted.]

Præcipe for transcript of record on appeal

Filed Nov. 8, 1929

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate the transcript and the following portions of the record in the above-entitled case for appeal of said appellant heretofore allowed to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

1. Complaint and petition for writ of habeas corpus.

2. Order granting writ of habeas corpus and fixing bond pending hearing thereon.

3. Writ of habeas corpus.
4. Return to writ of habeas corpus.
5. Order discharging said Mateo Zaja from custody of the said Walter E. Carr as director of immigration.
6. Petition for appeal.
7. Order allowing appeal.
8. Notice of appeal.
9. Assignments of error.
10. Stipulation that original files and records in the Department of Labor be sent to the clerk of the Circuit Court as part of the appelate record.

28 11. Order for transmission of original exhibits.
12. Citation.
13. This præcipe.
14. Record showing traverse to return on writ of habeas corpus.

Dated November 8th, 1929.

SAMUEL W. MCNABB,
United States Attorney.
GWYN S. REDWINE,
Assistant United States Attorney.
P. V. DAVIS,
Assistant United States Attorney.

[File endorsement omitted.]

Received copy of the within præcipe this 8th day of November, 1929.

J. EDW. KEATING,
THEODORE E. BOWEN,
Attorney for Petitioner.

29 [Clerk's certificate to foregoing transcript omitted in printing.]

30–31 [Minute entry of argument and submission, Feb. 12, 1930, omitted in printing.]

32 In United States Circuit Court of Appeals, Ninth Circuit

No. 6026

WALTER E. CARR, DIRECTOR OF IMMIGRATION, ETC., APPELLANT

vs.

MATEO ZAJA, APPELLEE

Order directing filing of opinion and filing and recording of decree

Feb. 17, 1930

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the

clerk and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed.

33 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6026

In the matter of MATEO ZAJA on habeas corpus

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES for the Los Angeles District, No. 31, appellant

vs.

MATEO ZAJA, APPELLEE

Upon appeal from the United States District Court for the Southern District of California, Central Division

Before RUDKIN, DIETRICH, and WILBUR, Circuit Judges

Opinion

Filed Feb. 17, 1930

DIETRICH, Circuit Judge:

In November, 1924, the appellee, Mateo Zaja, who, it is not questioned, was then a seaman, signed on the Italian steamship "Livenza" at Hamburg, Germany. The vessel arrived at San Pedro, California, on or about January 21, 1925, whereupon appellee deserted therefrom and entered the United States, where since that time he has continuously resided. On October 19, 1928, he was taken into custody under a warrant for his deportation, and after a hearing in due course a deportation order was made. By the court below a writ of habeas corpus was granted discharging him from the custody of the immigration officials, and the director of immigration appeals.

34 In the facts material to the application of the statute of limitations the case does not differ from Nagle v. Hansen, decided by this court in February, 1927 (17 Fed. (2d) 557). Upon a reexamination of the acts of 1917 and 1924, therein referred to, we adhere to the conclusion there reached. Appellee cites with apparent confidence United States ex rel. Rios v. Day (24 Fed. (2d) 654), but in that case the statute of limitations was not involved and it is not clear that in any respect it is to be deemed out of harmony with Nagle v. Hansen. Accordingly the judgment is affirmed.

[File endorsement omitted.]

35 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6026

WALTER E. CARR, AS DIRECTOR OF IMMIGRATION OF THE UNITED STATES for the Los Angeles District, No. 31, appellant

vs.

MATEO ZAJA, APPELLEE

Decree

Filed Feb. 17, 1930

Appeal from the District Court of the United States for the Southern District of California, Central Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof it is now here ordered, adjudged, and decreed by the court that the order of the said District Court in this cause be, and hereby is, affirmed.

[File endorsement omitted.]

36 [Clerk's certificate to foregoing transcript omitted in printing.]

37 Supreme Court of the United States

Order allowing certiorari

Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is assigned for hearing immediately following case No. 92, Demetrius Philippides vs. Benjamin M. Day, commissioner of immigration, port of New York.

And it is further ordered that the duly certified copy of the transcript of the proceedings below, which accompanied the petition, shall be treated as though filed in response to such writ.

[Endorsement on cover:] Filed No. 35037. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 125. Walter E. Carr, director of immigration of the United States for the Los Angeles district, No. 31, petitioner, vs. Mateo Zaja. Petition for writ of certiorari and exhibit thereto. Filed May 16, 1930. File No. 35037.

U. S. GOVERNMENT PRINTING OFFICE: 1930

Office Supreme Court,
FILED
MAY 16 19
CHARLES ELMORE C
CL

FILE COPY

No. ~~[illegible]~~ 125

In the Supreme Court of the United States

OCTOBER TERM, 1929

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31, PETITIONER

v.

MATEO ZAJA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ——.

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE United States for the Los Angeles District, No. 31, petitioner

v.

MATEO ZAJA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of Walter E. Carr, Director of Immigration, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled case on February 17, 1930.

QUESTION PRESENTED

Whether an alien who arrived in this country in 1925 as a seaman and deserted his ship, and who remained here for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Department of Labor thereunder, may be deported at any time under that Act or only within

three years after entry in accordance with the Immigration Act of 1917.

STATEMENT

The respondent, Mateo Zaja, is an alien, a citizen of Jugo-Slavia, and is of the Dalmatian race. He signed on the Italian steamship "Livenza" at Hamburg, Germany, about November, 1924, as a seaman. The vessel arrived at San Pedro, California, on or about January 21, 1925, and on the same day respondent deserted therefrom. (R. 13). Respondent was taken into custody on a warrant of arrest issued October 5, 1928, by the Secretary of Labor, charging that respondent "has been found in the United States, in violation of the Immigration Act of May 26, 1924, for the following among other reasons: That he has remained in the United States for a longer time than permitted under said act or regulations made thereunder." (R. 14.) At a hearing before the immigration inspector, at which the respondent was represented by counsel, he testified that he had never left the United States since his entry in 1925, and had been employed as a laborer on shore, and on fishing vessels operating in and out of San Pedro, always in local waters. (Immigration File, made an original exhibit below, R. 24.)

Subsequently, the Assistant to the Secretary of Labor issued a warrant of deportation on the ground contained in the warrant of arrest, permitting the respondent to depart voluntarily or ship

one way to any country of his choice, except to foreign contiguous territory. (R. 15.)

Thereupon respondent sued out a writ of *habeas corpus* in the District Court for the Southern District of California. The writ was sustained without opinion. (R. 19.) On appeal, the Circuit Court of Appeals affirmed the order of the District Court, holding that the facts as to the application of the three-year statute of limitation did not differ from the case of *Nagle* v. *Hansen*, 17 F. (2d) 557, decided by the same court. (R. 31, 37 F. (2d) 1016.)

SPECIFICATION OF ERRORS TO BE URGED

The errors which the petitioner urges as ground for the granting of the writ of certiorari and for reversal of the judgment of the Circuit Court of Appeals for the Ninth Circuit are:

1. The court erred in affirming the order of the trial court.

2. The court erred in holding that the three-year statute of limitation as provided in Section 34 of the Immigration Act of 1917 prevented the deportation of respondent.

3. The court erred in holding that respondent could not be deported as provided by Section 14 of the Immigration Act of 1924, without regard to the time of his entry.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case is in con-

flict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Piccolella* v. *Commissioner of Immigration*, 36 F. (2d) 1022 (No. 562, certiorari denied March 3, 1930), and *Demetrius Philippides* v. *Day*, 37 F. (2d) 1015 (No. 847, in which petition for certiorari was filed April 25, 1930, and which the respondent is not opposing), and the unreported decision of the Circuit Court of Appeals for the Sixth Circuit, rendered March 14, 1930, in *Zurbrick* v. *Traicoff*.

2. The question involved in this case is one of Federal law, which has not been, but should be, settled by this Court. In the administration of the immigration laws the Secretary of Labor is constantly confronted with the problem of deserting seamen. Since the Immigration Act of 1924, many inadmissible aliens have entered the United States as seamen with the purpose of circumventing the present restrictive immigration laws.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit should be granted.

THOMAS D. THACHER,
Solicitor General.

MAY, 1930.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The District Court sustained the writ of habeas corpus without opinion. (R. 19.) The opinion of the Circuit Court of Appeals (R. 31) is reported in 37 F. (2d) 1016.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Ninth Circuit was entered on February 17, 1930. (R. 32.)

The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are set forth in the Appendix hereto at pp. 10–15.

ARGUMENT

The question presented is whether an alien who arrived in this country in 1925 as a seaman and deserted his ship, and who remained here for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Department of Labor thereunder, may be deported only within three years after entry in accordance with Section 34 of the Immigration Act of 1917.

The Circuit Court of Appeals held that "in the facts material to the application of the statute of limitations the case does not differ from *Nagle* v. *Hansen,* decided by this court in February, 1927, 17 F. (2d) 557." (R. 31.) In the *Hansen case, supra,* the alien entered this country as a seaman on July 5, 1921, and was arrested more than three years thereafter and charged with being unlawfully in this country in that he entered without being admitted under the quota allowed to Norway for the fiscal year ending June 30, 1922. The Circuit Court of Appeals held that Section 34 of the Immigration Act of 1917 created "a special limitation, in favor of seamen as a class, which is not repealed by the 1924 Act," and, since the three-year limitation had expired, deportation could not be had.

It is to be noted, however, that in the *Hansen case* the alien was not charged with remaining longer than permitted by the 1924 Act, but with entering in violation of the Quota Act of 1921. The entry was before and not subsequent to the 1924 Act. The conclusion of the court in the *Hansen case* on the facts there presented is in accord with the judgment of the Circuit Court of Appeals for the Second Circuit in *United States ex rel. Danikas* v. *Day,* 20 F. (2d) 733, in which Section 34 of the Immigration Act of 1917 was held to govern the case of an alien seaman, who entered this country prior to the Immigration Act of 1924 and remained for a period of more than three years.

In *Piccolella* v. *Commissioner of Immigration,* 36 F. (2d) 1022, the alien entered this country in June, 1925, as a seaman, and deserted. He was arrested more than three years thereafter, and ordered deported on the ground that he was found in the United States in violation of the Immigration Act of 1924, in that he had remained here for a longer time than permitted by that Act and the regulations of the Department of Labor thereunder. The Circuit Court of Appeals for the Second Circuit affirmed the order dismissing the writ upon the authority of its decision in *Rios* v. *Day,* 24 F. (2d) 654; certiorari denied 277 U. S. 604.

In the *Rios case, supra,* the alien entered as a seaman in September, 1925, and abandoned his calling. He was arrested by the immigration authorities within three years after entry, and ordered deported for remaining here longer than permitted by the Immigration Act of 1924 and the regulations made thereunder. Although the special limitation of three years under Section 34 of the Immigration Act of 1917 was not involved, other provisions of that section requiring an examination of the seaman's qualification for admission and a finding of some ground for deportation other than his unlawful entry were asserted in support of the writ. These provisions were held inapplicable because of his entry pursuant to Section 19 of the 1924 Act. Thus the court held Section 34 of the 1917 Act inapplicable to seamen

temporarily admitted under the 1924 Act. The effect of the court's ruling in the *Rios case* was misapprehended by the court below because the three-year limitation was not involved. (37 F. (2d) 1016.)

In *Philippides* v. *Day*, 37 F. (2d) 1015, the alien entered this country in September, 1925, and deserted his ship. He was arrested more than three years thereafter, and charged with remaining here for a longer time than permitted by the Immigration Act of 1924 and the regulations prescribed thereunder, and after hearing ordered deported on that charge. The Circuit Court of Appeals for the Second Circuit affirmed the order dismissing the writ on the authority of the *Piccolella case, supra*. Petition for certiorari was filed in this Court on April 25, 1930 (No. 847), and the respondent has acquiesced in the issuance of the writ because of the conflict of decision with the instant case.

In *Zurbrick* v. *Traicoff*, decided March 14, 1930, 37 F. (2d) 517, unreported, the Circuit Court of Apeals for the Sixth Circuit held that an alien seaman who entered this country in October, 1924, and deserted, and who was arrested more than three years thereafter, could be deported under Section 14 of the Immigration Act of 1924, in that he remained in this country for a longer time than permitted under that Act and regulations prescribed thereunder. The court cited the *Rios case, supra*.

In *Cellamare v. Day*, 32 F. (2d) 623, and *Ex parte Sturm*, 38 F. (2d) 272, the District Court for the Southern District of New York held that alien seamen, who entered under the 1924 Act, deserted and were taken into custody more than three years thereafter, may be deported under Section 14 of the Immigration Act of 1924 and regulations prescribed thereunder.

CONCLUSION

It is submitted that the petition for a writ of certiorari should be granted because of the conflict of decision between the Circuit Court of Appeals for the Ninth Circuit and the Circuit Courts of Appeals for the Second and Sixth Circuits. The question presented is an important one in the administration of the immigration laws.

THOMAS D. THACHER,
Solicitor General.

O. R. LUHRING,
Assistant Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

FRANK M. PARRISH,
Attorney.

MAY, 1930.

APPENDIX

STATUTES INVOLVED

Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 161–164, 168:

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. [U. S. C. Title 8, Sec. 203.]

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. [U. S. C. Title 8, Sec. 213.]

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have

remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: * * *. [U. S. C. Title 8, Sec. 214.]

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed * * * to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. [U. S. C. Title 8, Sec. 215.]

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.

SEC. 28 (b) The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of

the United States not taxed, nor citizens of the islands under the jurisdiction of the United States. [U. S. C. Title 8, Sec. 224.]

* * * * *

Immigration Act of 1917, c. 29, 39 Stat. 874, 896:

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act.

Sections 19 and 20 of the Immigration Act of 1917, 39 Stat. 889–891 (U. S. C. Title 8, Secs. 155, 156), referred to in Section 14 of the Immigration Act of 1924, *supra,* make no provision for a board of special inquiry. Also, unlike Section 34 of the Immigration Act of 1917, Section 14 of the Immigration Act of 1924 does not require that before deportation can be had there must be an examination into the qualifications for admission of the offending seaman.

PERTINENT REGULATIONS

Paragraph 6 (c) of General Order No. 38, issued by the Department of Labor on September 10, 1924,

and in effect when the seaman involved in the instant case arrived in this country, provides:

> Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than sixty days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of subdivision (5) of Section 3 of the Immigration Act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of Section 14 of said Act.

Rule 6, Subdivision I, paragraphs 1, 2, and 3 of the July 1, 1925, edition of the Immigration Rules of the Department of Labor, provides as follows:

> *Par. 1.*—Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country within three years from the date of landing. Such alien then shall be brought before a board of special inquiry and subjected to a thorough examination under all provisions of the immigration law

applicable to the case of an alien seeking admission; such investigation, if any, as may be necessary to develop evidence concerning him shall be conducted and he shall be subjected also to the medical examination required in the cases of alien applicants for admission: *Provided,* That his qualifications for admission to the United States shall be determined according to the immigration laws, rules, and regulations in force at the time of such examination. If such seaman is rejected by the board he shall be allowed an appeal to the department unless the rejection is upon a ground with respect to which the law prohibits an appeal; and in any event the record of the board of special inquiry shall be transmitted to the bureau for submission to the department, in order that a final decision may be rendered if upon appeal and that a warrant of deportation may be issued whether upon appeal or not. Upon the issuance of the warrant the alien shall be deported at the expense of the immigration appropriation.

Par. 2.—Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the

United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

Par. 3.—If the alien is charged in the warrant of arrest merely with entering contrary to the provisions of section 34 of the act of February 5, 1917, the conduct of the hearing shall be governed by subdivision B of rule 11. But if the warrant is based on some other charge, the conduct of the hearing shall be governed by subdivision D of rule 18.

The above rules were carried into the March 1, 1927, edition without change.

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No. 125

In the Supreme Court of the United States

OCTOBER TERM, 1930

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31, PETITIONER

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE United States for the Los Angeles District, No. 31, petitioner

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 15) is reported in 37 F. (2d) 1016. The District Court rendered no opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 17, 1930. (R. 16.) The petition for certiorari was filed in this Court on

May 16, 1930, and certiorari was granted October 13, 1930. (R. 16.) The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who arrived in this country as a seaman after the effective date of the Immigration Act of 1924 and then deserted, and who remained here for a longer period than permitted by the regulations of the Department of Labor promulgated under that Act, may be deported at any time as provided in that Act, or only within three years after entry.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 18–25.

STATEMENT

The following facts are shown by the petition for *habeas corpus* and return of the Director of Immigration, who is petitioner here.

The respondent is an alien and a citizen of Jugoslavia. He signed on the Italian Steamship *Livenza* at Hamburg, Germany, about November, 1924, as a seaman. The vessel arrived at San Pedro, California, on or about January 21, 1925. (R. 6–7.) The respondent then deserted the ship and has remained in the United States continuously

ever since. (R. 2, 7.) He was taken into custody on a warrant of arrest issued on October 5, 1928, by the Secretary of Labor, charging that the respondent had been found in the United States, in violation of the Immigration Act of May 26, 1924, in that he "had remained in the United States for a longer time than permitted under the said act or regulations made thereunder." (R. 7.) Thereafter, the Secretary of Labor issued a warrant of deportation (R. 7) on the ground stated in the warrant of arrest. (R. 2.)

Thereupon the respondent sued out a writ of *habeas corpus* in the District Court for the Southern District of California. The writ was sustained and the petitioner discharged from custody, without opinion. (R. 9.) On appeal, the Circuit Court of Appeals affirmed the order of the District Court. (R. 15.)

SPECIFICATION OF ERRORS TO BE URGED

1. The court erred in affirming the order of the trial court.

2. The court erred in holding that the three-year statute of limitation as provided in Section 34 of the Immigration Act of 1917 prevented the deportation of respondent.

3. The court erred in holding that the respondent could not be deported as provided by Section 14 of the Immigration Act of 1924, without regard to the time of his entry.

SUMMARY OF ARGUMENT

The deportation of the respondent was authorized by Section 14 of the Immigration Act of 1924. That section provides that "any alien who at any time after entering the United States is found * * * to have remained therein for a longer time than permitted under this act or regulations made thereunder, shall be taken into custody and deported * * *." The respondent has remained in this country for a longer time than that allowed by regulations issued under Section 15 of the Immigration Act of 1924. His deportation is therefore required by Section 14 of that Act.

Section 34 of the Immigration Act of 1917 is not applicable to the respondent. The ruling of the courts below apparently rests on the ground that Section 34 of the 1917 Act limits the time within which an alien seaman can be arrested for deportation to three years after his landing in the United States. But Section 34 by its express terms relates only to seamen "who shall land * * * contrary to the provisions of this Act." Whether the respondent's entry was contrary to the 1917 Act or not, Section 34 of that Act can not affect a proceeding brought under the express terms of Section 14 of the 1924 Act relating to alien seamen who remain in the United States for a longer time than permitted by regulations issued under that Act. The respondent's deportation was based on the latter ground, and was authorized without limitation as to time by Section 14 of the 1924 Act.

Section 14 of the 1924 Act clearly relates to alien seamen as well as to other aliens. The opposite view, apparently taken by the courts below, can not be supported. Alien seamen are expressly included in Section 15 of the 1924 Act as being among those concerning whom the Secretary of Labor may make regulations governing the length of their stay in the United States. And Section 19 clearly refers to all alien seamen who, like the respondent, were not eligible for permanent admission into the United States.

There is nothing in the legislative history to support the construction adopted by the courts below. Furthermore, that construction would leave the Department of Labor without any means of deporting alien seamen who remain in this country longer than is allowed by the regulations. The construction urged by the Government, on the other hand, gives full force and effect to both Section 34 of the 1917 Act and Section 14 of the 1924 Act.

ARGUMENT

I

THE RESPONDENT'S DEPORTATION WAS AUTHORIZED BY SECTION 14 OF THE IMMIGRATION ACT OF 1924

The Immigration Act of 1917 provided for the admission of immigrants on a selective basis. By its provisions, immigrants with certain physical, mental, or moral defects were made inadmissible; but under the 1917 Act there was no numerical lim-

itation on immigration. The first numerical limit was imposed by the Quota Act of May 19, 1921, c. 8, 42 Stat. 5. That Act was superseded by the Immigration Act of 1924, which continued in effect the policy of limiting the admission of aliens on a numerical basis. But the 1924 Act did not replace the 1917 Act, and the selective requirements of that Act continued in effect. Although both Acts are now in force, they are nevertheless distinct Acts with distinct, though related, purposes.

Section 14 of the Immigration Act of 1924 (*infra,* pp. 20–21) provides—

> Any alien who *at any time* after entering the United States is found to have been at the time of entry not entitled under this act to enter the United States, or to have remained therein for a longer time than permitted under this act or regulations made thereunder, shall be taken into custody and deported * * *. (Italics ours.)

The respondent arrived as a seaman. (R. 2.) He was, therefore, a nonimmigrant as that term is defined in Section 3, subdivision (5) of the Immigration Act of 1924 (*infra,* p. 20). Under Section 15 of the Immigration Act of 1924 (*infra,* p. 21) he was therefore admissible to the United States "for such time as may be by regulations prescribed * * *." It is also provided in Section 19 of the Immigration Act of 1924 (*infra,* p. 21)

that no alien seaman [1] shall be permitted to land in the United States except "pursuant to such regulations as the Secretary of Labor may prescribe * * *." It follows, therefore, that if the respondent has stayed longer in the United States than is allowed by the regulations made under Sections 15 and 19 of the Immigration Act of 1924, he may be deported under the express provisions of Section 14 of that Act requiring the deportation of an alien who is found "at any time after entering the United States" to have remained "for a longer time than permitted under this act or regulations made thereunder."

By regulations promulgated by the Secretary of Labor, under the authority of Section 15 of the Immigration Act of 1924, *bona fide* alien seamen are permitted to remain within the United States for sixty days. Paragraph 2 of Rule 6, Subdivision I, of the immigration rules promulgated by the Secretary of Labor on July 1, 1925 [2] (*infra*, p. 24), provides that—

> When a bona fide alien seaman * * * permitted to enter temporarily the United

[1] The section relates to alien seamen "excluded from admission into the United States under the immigration laws." As respondent does not assert that he had any right to admission, this section is applicable. (See p. 14, *infra*.)

[2] Paragraph 6(c) of General Order No. 38 (*infra*, p. 23), issued by the Department of Labor on September 10, 1924, is substantially the same, and was in effect when the seaman involved in the instant case arrived in this country.

> States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall * * * be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

The respondent's situation is clearly covered by this regulation. He entered the country as a *bona fide* alien seaman and was consequently one of the class who are "permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924." He has remained within the United States for more than sixty days after his entry. He has consequently remained longer within the United States than is permitted by the regulations, and his deportation is, therefore, required by Section 14 of the Immigration Act of 1924.

II

SECTION 34 OF THE IMMIGRATION ACT OF 1917 DOES NOT BAR THE DEPORTATION OF THE RESPONDENT

The ruling of the courts below apparently rests upon the assumption that Section 34 of the Immigration Act of 1917 limits the time within which an alien seaman can be arrested for deportation

to three years after his landing in a port of the United States. We submit that this section has no application to the respondent.[3]

Section 34 of the Immigration Act of 1917 (*infra*, p. 19) provides—

> That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported * * *.

There is nothing in the Immigration Act of 1924 or in any other Act which expressly repeals Section 34 of the 1917 Act. But Section 25 of the 1924 Act provides that—

> The provisions of this act are in addition to and not in substitution for the provisions

[3] The compilers of the United States Code have combined into one section (Title 8, Section 166) both the provisions of Section 19 of the Immigration Act of 1924 and those of Section 34 of the Act of 1917. Besides combining the two sections certain changes of language have been made which convey the impression that deportation of alien seamen who have remained longer than allowed by regulations issued under Section 19 of the 1924 Act is limited by the three-year limitation contained in Section 34 of the 1917 Act. But this action by the compilers of the Code neither repeals nor amends the preexisting statutes. Section 2(a) of the enacting clause.

> of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act.

It thus becomes necessary to determine whether Section 34 of the 1917 Act is "inapplicable" either because of its terms or on account of the passage of the Immigration Act of 1924.

Section 34 by its express terms relates only to a seaman "who shall land * * * contrary to the provisions of this Act." "This Act" is of course the Immigration Act of 1917. For Section 34 to be applicable it must, therefore, be found that the seaman in question landed contrary to some provision of the 1917 Act. Apart from certain provisions not material here, the sections of the 1917 Act providing for the exclusion or deportation of aliens are Sections 3, 19, and 32.

Section 32 of the Immigration Act of 1917 was expressly repealed by Section 20 (d) of the Immigration Act of 1924 (*infra,* pp. 21–22) which was enacted nearly a year before the respondent's entry into the United States. It follows, therefore, that the respondent did not land in the United States contrary to the provisions of Section 32 of the 1917 Act.

Sections 3 and 19 of the 1917 Act provide for the exclusion or deportation of aliens with certain specified physical, mental, or moral defects. There is nothing to indicate that the respondent was inad-

missible under these provisions. Section 19 of the 1917 Act further provides that—

> At any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials * * * or who enters without inspection, shall * * * be taken into custody and deported.

It is doubtful whether Section 19 has any application to the deportation of alien seamen on account of inadmissibility at time of landing. See *United States ex rel. Danikas* v. *Day,* 20 F. (2d) 733 (C. C. A. 2d). Moreover, it is difficult to tell from the present record whether the respondent landed in violation of this provision. Absence of proof of a lawful entry is not evidence of an unlawful entry. *United States ex rel. Linklater* v. *Commissioner of Immigration,* 36 F. (2d) 239 (S. D. N. Y.); *United States ex rel. Shore* v. *Day,* 36 F. (2d) 264 (S. D. N. Y.).

But even if it be assumed that the respondent's entry was without inspection and also that it violated the provision of Section 19 quoted above, the only consequence is that the respondent may not now be deported for that offense. He was a seaman when he entered, and under Section 15 of the 1924 Act was admissible for the time prescribed in the regulations of the Department of Labor. His remaining longer than that time was a distinct ground for deportation under Section 14 of the 1924 Act. Even if what he did was covered by Section

34 of the 1917 Act that fact did not make him any the less subject to the provisions of Section 14 of the 1924 Act. *United States* v. *Wong You*, 223 U. S. 67.

Section 14 of the 1924 Act expressly provides for the deportation at any time of an alien who has remained longer within the United States than the time allowed by the regulations of the Labor Department. The respondent came within the terms of this section and his deportation was properly ordered under its provisions. This view was adopted in *Zurbrick* v. *Traicoff*, 38 F. (2d) 811 (C. C. A. 6th). See also *United States, ex rel. Anastasios Cateches* v. *Day* (C. C. A. 2d), decided November 6, 1930, not yet reported; *United States ex rel. Bardakos* v. *Mudd*, 33 F. (2d) 334 (D. Md.).

Another view which has been adopted in some cases is that Section 34 of the 1917 Act continued to be applicable to seamen who landed before the passage of the Act of 1924, but that on account of the general provisions of Section 14 of the 1924 Act it became "inapplicable" to those who landed after that Act was passed. This view was adopted in *United States ex rel. Rios* v. *Day*, 24 F. (2d) 654 (C. C. A. 2d),[4] certiorari denied, 277 U. S. 604;

[4] This decision was followed by the Circuit Court of Appeals for the Second Circuit in *Piccolella* v. *Commissioner of Immigration*, 36 F. (2d) 1022, certiorari denied, 281 U. S. 723; *Philippides* v. *Day*, 37 F. (2d) 1015, now pending as No. 92, October Term, 1930; *United States ex rel. Costas Cateches* v. *Day*, 41 F. (2d) 1019, now pending as No. 336, October Term, 1930.

Cellamare v. *Day*, 32 F. (2d) 623 (S. D. N. Y.); *Ex parte Sturm*, 38 F. (2d) 272 (S. D. N. Y.). See also *United States ex rel. Anastasios Cateches* v. *Day, supra.*

It has been contended that the effect of Section 34 of the 1917 Act is to make Section 14 of the Immigration Act of 1924 inapplicable to alien seamen. This was apparently the view taken, as to another question, in *Nagle* v. *Hansen*, 17 F. (2d) 557 (C. C. A. 9th), and followed by the court below in the instant case, and in *Nagle* v. *Mendoza*, 41 F. (2d) 745. It is urged in behalf of the seamen that the Immigration Act of 1924 refers to three distinct classes of individuals, "immigrants," "aliens," and "alien seamen," that Section 14 relates only to "aliens" and not to "alien seamen," and that Section 19 refers only to alien seamen who are excludable for some personal reason, such as those from the barred zone.

We submit that this construction can not be sustained. The term "alien" is broader than "alien seamen," and is defined in Section 28 of the 1924 Act (*infra*, p. 22) to include "any individual not a native-born or naturalized citizen of the United States" except "Indians of the United States not taxed" and "citizens of the islands under the jurisdiction of the United States." The term "alien" therefore includes "alien seamen." It is obviously so used at the end of Section 19 of the 1924 Act. Section 34 of the 1917 Act relates only to alien seamen; but there is nothing to exclude

alien seamen from the operation of Section 14 of the 1924 Act, and, indeed, as has been pointed out above (*supra,* p. 7), "alien seamen" are by the express provisions of Section 15 included among those concerning whom the Secretary of Labor may make regulations, the violation of which is ground for deportation under Section 14.

Nor do we believe that there is any ground for a construction of Section 19 which would limit the application of that section to alien seamen from the barred zones. The section by its terms refers to alien seamen "excluded from admission into the United States under the immigration laws." We understand this language to refer to all alien seamen who would be ineligible for permanent entry into the United States. The respondent has not shown that he was not such an alien seaman, for he has not shown that he was in possession of an immigration visa. See Section 13 (a) of the Immigration Act of 1924.

Counsel for the petitioner in his brief in support of the petition for certiorari in the case of *Philippides* v. *Day,* now pending before this Court as No. 92, October Term, 1930, urges that the legislative history shows that Congress did not intend that Section 14 of the Immigration Act of 1924 should apply to alien seamen nor that Section 19 should apply to alien seamen other than those from the barred zone. Reliance is placed on various

statements made on the floor of Congress. An examination of the Committee Reports (House Reports Nos. 350, 688, and 716, 68th Congress, 2nd Session) and of these statements makes it clear, we agree, that Congress did not intend to repeal Section 34 of the 1917 Act. But we do not find anything in this legislative history which indicates that the plain language of Section 19 should be restricted so as to apply only to seamen from the barred zone.

Furthermore, the regulations which the respondent violated were issued under Section 15 of the 1924 Act as well as under Section 19; and there is a complete absence of anything in the legislative history to qualify Section 15 in its obvious application to alien seamen.

Such a construction would deprive the Secretary of Labor of all authority to deport an alien seaman, allowed to enter the United States as a nonimmigrant, who stayed longer than the period prescribed in the regulations. Section 34 of the 1917 Act would not apply, for that Section relates only to seamen "who shall land * * * contrary to the provisions" of the 1917 Act; and Section 14 of the 1924 Act would not apply under the argument that it relates only to aliens other than alien seamen. This contention thus practically nullifies the immigration laws so far as alien seamen are concerned. Such a construction should not be adopted, especially in view of the fact that Section 14 of the 1924 Act by its express terms relates to "any alien."

On the other hand, the Government's position does not operate to nullify Section 34 of the 1917 Act. That section is undoubtedly still in force and applicable to seamen who landed prior to the enactment of the 1924 Act. See *United States ex rel. Danikas* v. *Day*, 20 F. (2d) 733 (C. C. A. 2d). It may also be applicable to seamen who land after that time in violation of the 1917 Act. Section 14 of the 1924 Act is applicable to alien seamen whose landing is permitted by the 1924 Act but who remain longer than is allowed by the regulations issued under that Act. That the old rule should be applied to seamen who arrive before the passage of the Act of 1924 is not incongruous. It avoids giving retroactive effect to the new rule. If the Act of 1917 now applies to aliens who come here in violation of that Act and are not found here in violation of the 1924 Act, the old rule is continued in effect in cases where the new rule does not apply. There is nothing incongruous in this, and if there were, there would be no reason for ignoring the plain provision of the statute. As the court said in *United States ex rel. Georgas* v. *Day*, 43 F. (2d) 917, 919 (C. C. A. 2d)—

> statutory provisions, so confused, contradictory, minute and manifold, as the immigration laws, inevitably produce such caprices. Still the whimsies that they create give us no power to dispense with the language; indeed, the more detailed they are, the less latitude we are given, perhaps deliberately.

CONCLUSION

The judgment below is erroneous and should be reversed.

Respectfully submitted.

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JANUARY, 1931.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

STATUTES

The Immigration Act of 1917, c. 29, 39 Stat. 874, 895–896, provides in part:

> SEC. 32.[1] That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

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[1] This section was repealed by Section 20(d) of the Immigration Act of 1924 (*infra*, pp. 21–22).

SEC. 33. That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided,* That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. (U. S. C., Title 8, Sec. 168.)

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. (U. S. C., Title 8, Sec. 166.)

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 161–164, 166, 168, provides in part:

> SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. (U. S. C., Title 8, Sec. 203.)
>
> SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a nonquota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. (U. S. C., Title 2, Sec. 213.)
>
> SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917[2]: *Provided*, That the Secretary of La-

[2] Sections 19 and 20 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 889, 890 (U. S. C., Title 8, Secs. 155, 156), referred to in this section, make no provision for a board of special inquiry, nor do they require that before deportation can be had there must be an examination into the qualifications for admission of the offending seaman.

bor may, under such conditions and restrictions as to support and care as he may deem necessary, permit permanently to remain in the United States, any alien child who, when under 16 years of age was heretofore temporarily admitted to the United States and who is now within the United States and either of whose parents is a citizen of the United States. (U. S. C., Title 8, Sec. 214.)

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a nonquota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clauses (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. (U. S. C., Title 8, Sec. 215.)

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. (U. S. C., Title 8, Sec. 166.)

SEC. 20. * * *

(d) Section 32 of the Immigration Act of 1917 is repealed, but shall remain in force

as to all vessels, their owners, agents, consignees, and masters, and as to all seamen, arriving in the United States prior to the enactment of this Act.

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor. (U. S. C., Title 8, Sec. 222.)

SEC. 25. The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act. An alien, although admissible under the provisions of this act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this act, and an alien, although admissible under the provisions of the immigration laws other than this act, shall not be admitted to the United States if he is excluded by any provision of this act. (U. S. C., Title 8, Sec. 223.)

SEC. 28 (b). The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed, nor citizens of the islands under the jurisdiction of the United States. (U. S. C., Title 8, Sec. 224.)

REGULATIONS

Paragraph 6(c) of General Order No. 38, issued by the Department of Labor on September 10, 1924, provides:

> Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than sixty days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of subdivision (5) of Section 3 of the Immigration Act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of Section 14 of said Act.

Rule 6, Subdivision I, paragraphs 1, 2, and 3, of the Immigration Rules of the Department of Labor, promulgated July 1, 1925, provides as follows:

> PAR. 1. Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country within three years from the date of landing. Such alien then shall be brought before a board of special inquiry and subjected to a thorough examination under all provisions of the immigration law applicable to the case of an alien seeking

admission; such investigation, if any, as may be necessary to develop evidence concerning him shall be conducted and he shall be subjected also to the medical examination required in the cases of alien applicants for admission: *Provided,* That his qualifications for admission to the United States shall be determined according to the immigration laws, rules, and regulations in force at the time of such examination. If such seaman is rejected by the board he shall be allowed an appeal to the department unless the rejection is upon a ground with respect to which the law prohibits an appeal; and in any event the record of the board of special inquiry shall be transmitted to the bureau for submission to the department, in order that a final decision may be rendered if upon appeal and that a warrant of deportation may be issued whether upon appeal or not. Upon the issuance of the warrant the alien shall be deported at the expense of the immigration appropriation.

PAR. 2. Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

PAR. 3. If the alien is charged in the warrant of arrest merely with entering contrary to the provisions of section 34 of the act of February 5, 1917, the conduct of the hearing shall be governed by subdivision B of rule 11. But if the warrant is based on some other charge, the conduct of the hearing shall be governed by subdivision D of rule 18.

These rules were included without change in the immigration rules of the Department of Labor, promulgated March 1, 1927.

In the immigration rules promulgated by the Department of Labor on January 1, 1930, paragraphs 1 and 3, *supra,* were omitted, and paragraph 2, *supra,* was retained as paragraph 1 of Rule 7, Subdivision I.

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No. 125

In the Supreme Court of the United States

OCTOBER TERM, 1930

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31, PETITIONER

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 125

WALTER E. CARR, DIRECTOR GENERAL OF IMMIGRATION of the United States for the Los Angeles District, No. 31, petitioner

v.

MATEO ZAJA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

Since the Government filed its briefs in this case and in Nos. 92 and 336, which present the same points, the respondent has filed its brief. As certain contentions made in it are not considered in the Government's briefs, we reply to them herein.

I

Respondent's brief (p. 8) quotes the following provision of Rule 6, subdivision I, paragraph 1, of the Immigration Rules of July 1, 1925:

> Any alien who shall come to a United States port as a seaman and land in the

> United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country within three years from the date of landing.

And respondent's brief then states:

> It is, therefore, apparent that the Secretary of Labor in 1925 recognized that regulations affecting alien seamen, promulgated pursuant to the authority conferred upon him by the provisions of the Immigration Act of 1924, were, nevertheless, limited by the provisions of Section 34 of the Act of 1917, and that this Section was not repealed by the Act of 1924.

It is true that Section 34 of the Act of 1917 was not repealed by the Act of 1924, and the part of Rule 6 quoted by the respondent is applicable to proceedings brought under Section 34 of that Act. But the rest of the above assertion is unfounded. Paragraphs 2 and 3 of the same Rule (printed on pp. 24–25 of the petitioner's brief) show clearly that the limitations of Section 34 are not applied by the Department of Labor to proceedings to deport alien seamen for remaining for more than sixty days after entry. In view of these provisions, it is obvious that the first paragraph of this Rule was not meant to apply to such proceedings, although the language of the first sentence of that paragraph, standing by itself, might be susceptible of that construction. Paragraph 2 of this Rule ex-

pressly states that if the seaman remains for more than sixty days after entry he "shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14" of the Act of 1924. And paragraph 3 of the Rule provides that if the warrant is based on some charge other than entering contrary to the provisions of Section 34 of the Act of February 5, 1917, "the conduct of the hearing shall be governed by subdivision D of rule 18." Subdivision D of Rule 18 provides for a hearing by an examining inspector, whereas Section 34 of the Act of 1917 requires that the alien be brought before a board of special inquiry for examination as to the alien's qualifications for admission.

Although the language of the first sentence of paragraph 1, quoted above, is not very felicitous, it is obvious, in the light of the explicit provisions of paragraphs 2 and 3 of the Rule, that this sentence should be construed as if it read:

> Any alien who shall come to a United States port as a seaman and land in the United States in violation of some provision of the act of February 5, 1917, shall be arrested as provided in section 34 of said act whenever and wherever found in this country within three years from the date of landing, if the proceeding for deportation is based on the violation of a provision of said act.

The practice of the Department of Labor has construed the language in this limited manner.

II

Part of the argument of the respondent seems to be based upon the contention that he entered the United States surreptitiously and that he can be deported only in accordance with the provision of Section 34 of the Act of 1917.

As we have suggested in our original brief, the alien can not be better off if his conduct constituted a violation both of Section 34 of the 1917 Act and of the regulations promulgated under Section 14 of the 1924 Act than he would be if he had violated the regulations only.

In any event, the respondent is not in a position to raise this point. If a violation of the provisions of the 1917 Act would benefit him, he must show that he did violate them. Although this particular situation is not expressly mentioned in Section 23[1] of the Act of 1924, which deals with the burden of proof, the principle underlying it would be contravened by compelling the Government to prove that the alien did not enter in violation of the 1917 Act in order to deport him under the 1924 Act.

---

[1] This section provides: "Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; and in any deportation proceeding against any alien the burden of proof shall be upon such alien to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigration visa, if any, or of other documents concerning such entry, in the custody of the Department of Labor."

There is no allegation in the petition for *habeas corpus* that the alien entered in violation of the provisions of the 1924 Act, and the ground for deportation asserted in the warrant of arrest and the warrant of deportation is merely that the alien remained in the United States for a longer time than permitted under the Act of 1924 and the regulations made thereunder. This was the only fact found by the Immigrant Inspector after the hearing.[2]

Although the testimony is not very clear, we submit that a reasonable interpretation of it is consistent only with the theory that the immigrant entered lawfully. Thus, in the investigation of October 4, 1928, which was made by Inspector in Charge Gatley before the alien was arrested, the alien stated that when he got the job on the S. S. *Livenza* he did not intend to leave the ship in the United States; and he testified that when the *Livenza* arrived in the United States "we were lined up on deck and two men walked by us," and that "they took two men away with them." (Evidently they were immigration officials and evidently

[2] The warrant and the transcript of the hearing before the Immigrant Inspector, as well as certain other documents and proceedings referred to hereafter, do not appear in the printed record filed in this Court. But all of these are in the record of the Bureau of Immigration which is filed with the Clerk of this Court and which is part of the record in this case. (See R. 12–13.)

they passed the respondent.) In the same hearing he testified that the captain did not pay him off.

In the hearing before Inspector Thur on October 22, 1928, at which the respondent was represented by counsel, he said that all of the evidence which he had given before Inspector Gatley was true. At this hearing the alien testified that when he left the ship in San Pedro his intention was to change to another ship; that when he had stayed here a while he got a job working in ditches, and that his intention to stay in the United States occurred after he got work ashore.

Moreover, the alien denied that he had been arrested since entry or that he had certain diseases about which he was asked. These questions and answers, so far as they go, indicate that he had done nothing which would be a ground for deportation under the 1917 Act.

III

The respondent's brief also argues that the cause has become moot, inasmuch as no application for a stay of mandate was made and the mandate of the Circuit Court of Appeals was sent to the District Court and was spread upon the minutes of that court. It does not appear that the District Court took any further action and we are informed by telegram from the clerk of that court that nothing has been done by that court since the mandate was spread upon the minutes.

When the writ of *habeas corpus* was issued a bond was filed in the District Court,[3] one of the conditions of which is that the alien shall—

> abide all the orders, judgments and decrees of said court and not depart the said court without leave until the habeas corpus proceedings shall have been fully disposed of and shall surrender himself to Walter E. Carr, District Director of District Number 31, Immigration Service of the United States of America, in the event said writ of habeas corpus shall be discharged and said Mateo Zaja be remanded to the custody of the immigration officials * * *

This bond has not been canceled or the bail released, and we submit that it remains in force and that the above condition will be broken if this Court reverses the decree of the District Court and the alien is not then surrendered to the proper immigration officials.

Regardless of what has been done, it is clear that the issuance of the mandate and the steps taken subsequent thereto are ineffective to deprive this Court of jurisdiction to review and correct the decrees of the courts below. *The Conqueror,* 166 U. S. 110, 113. See also *Magnum Co.* v. *Coty,* 262 U. S. 159; *Thomsen* v. *Cayser,* 243 U. S. 66, 83;

---

[3] The only mention of this in the record is in the order of the District Court commanding the writ to issue, in which appears this statement: "pending hearing thereon petitioner to be released on $500 bond." The clerk of the District Court informs us by telegram that bond was given and that it contains the condition quoted above.

Ritter v. *Mutual Life Ins. Co.*, 72 Fed. 567 (C. C. A. 3d), 169 U. S. 139; *Louisville &c. Railroad* v. *Behlmer*, 169 U. S. 644, 648; Rule 45 of the Supreme Court.

IV

United States ex. rel. Anastasios Cateches v. Day (C. C. A. 2d), referred to on pages 12–13 of our original brief in the instant case as "not yet reported" is now reported in 45 F. (2d) 142.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

NUGENT DODDS,
Assistant Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

HARRY S. RIDGELY,
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Department of Labor,
Of Counsel.

FEBRUARY, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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No. 125

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31,

Petitioner,

versus

MATEO ZAJA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

ERWIN I. FELDMAN,
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Counsel for Respondent.

The Daily Record Co. Print, Baltimore.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 125.

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31,

Petitioner,

versus

MATEO ZAJA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The District Court ordered respondent discharged from custody on the authority in Nagle, etc., vs. Hansen, 17 Fed. (2d) 557, (R. 9). The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 37 F. (2d) 1016.

STATEMENT OF THE CASE.

Presumably the records of the Immigration Service have been filed with the Clerk of the Supreme Court as an original exhibit. (See Stipulation, R. 12.) They will be referred to throughout this brief as "Immigration

File." The printed transcript of the proceeding in the Circuit Court will be referred to as "Transcript of Record."

The facts in this case are simple and undisputed. The immigration file discloses that Mateo Zaja, a Dalmatian, last entered the United States as a deserting seaman on January 21, 1925. He had been a sailor all his life. He had left his native country in 1924 on a cruise to South America, and from that place shipped on the S. S. Levenza enroute to Trieste, Italy, at which time he had no intention of leaving the ship, in the United States. (Immigration File, Preliminary Hearing, October 9, 1928, pp. 1 and 2.)

When the boat arrived at San Pedro enroute to Trieste, Mateo Zaja deserted the ship because he did not like an Italian boat and because he did not want to go back to Trieste. At that time he intended to catch another ship at San Pedro. (Immigration File, Hearing of October 22, 1928, p. 5.)

Since his arrival in the United States, he has never been out of this country, save and except as the member of the crew of fishing boats in local waters. (Immigration File, Hearing of October 22, 1928, p. 3.) During his stay in this country he has worked regularly as a seaman on fishing boats, except for a short period of time while he was in the hospital and for a short time while he had a job digging ditches during the off season.

Mateo Zaja was taken into custody by the United States Immigration Service on the 4th day of October, 1928, having been at that time in this country continuously for a period in excess of three years and eight months.

The charge upon which Mateo Zaja was tried by the Immigration Service, and the finding of that Service upon which the warrant of deportation is based, is as follows:

> "Has been found in the United States in violation of the United States Immigration Act approved May 26, 1924, for the reason that he remained in the United States for a longer time than permitted under said act or regulations made thereunder."

Mateo Zaja then sued out a writ of habeas corpus in the District Court for the Southern District of California. Upon this writ he was released from custody. On appeal, the Circuit Court of Appeals for the Ninth Circuit affirmed the order of the District Court, holding that the deportation of Mateo Zaja was barred by virtue of the three-year statute of limitations contained in Section 34 of the Immigration Act of February 5, 1917 (8 U. S. C. 166), following the former decision of that court in *Nagle vs. Hansen*, 17 Fed. (2d) 557.

SUMMARY OF ARGUMENT.

Deportation of the respondent is barred by the three year limitation period set out in Section 19 and Section 34 of the Immigration Act of 1917 (8 U. S. C. 155 and 166). That the provisions of the Immigration Act of 1924 are in addition to and not in substitution of the Immigration Laws of 1917 and do not repeal any of the provisions of the 1917 Act not expressly repealed.

That the question in this case has become moot in so far as this respondent is concerned by the failure of the petitioner to stay mandate of the Circuit Court of Appeals within time prescribed by Rule 32 of the Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT.

I.

THE RESPONDENT'S DEPORTATION WAS NOT AUTHORIZED IN VIEW OF SECTION 19 AND SECTION 34 OF THE IMMIGRATION ACT OF 1917.

Having resided for more than three continuous years in the United States prior to the institution of the deportation proceedings, respondent contends that his deportation is barred by the provisions of Section 19 and Section 34 of the Immigration Act of 1917 (8 U. S. C. 155 and 166).

Section 34 of the Immigration Act of February 5, 1917 (8 U. S. C. 166), provides:

> "That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this act as provided in section twenty of this act."

Section 14 of the Immigration Act of 1924, which petitioner contends repeals Section 34 of the 1917 Act, reads as follows:

> "Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported * * *."

The most elemental rules of statutory construction establish that Section 34 of the Act of 1917 is in full force and effect. First of all, it should be noted that there is no express repeal. If there is any repeal at all it is a repeal by implication. However, it is a fundamental rule of statutory construction that a later statute will not repeal a prior statute unless they are clearly inconsistent and cannot be reconciled. Such is not the case here. Section 34 of the Immigration Act of 1917 deals with a certain, definite, special class, while Section 14 of the Immigration Act of 1924 is a general statute and does not apply to the special class created by the Act of 1917.

Respondent's argument in this regard is perhaps best set forth in the opinion of the Circuit Court of Appeals for the Ninth Circuit in *Nagle vs. Hansen*, 17 Fed. (2d) 557, the following excerpt from which is particularly applicable and determinative of the contentions made by petitioner in this regard:

Page 558:

"(2, 3) The second question is as to whether section 14 of the Immigration Act of 1924 repeals section 34 of the Act of 1917. The general provision in the 1924 Act that aliens, who have entered unlawfully or remained illegally 'at any time after entering the United States,' shall be taken into custody and deported, is inconsistent with the provisions of section 34 of the Act of 1917, and would suggest a repeal of the latter by implication, unless section 34 may be said to create a special class, subject to special and different treatment. And, considering it in the relation it bears to other provisions of the Act of 1917, we think it does create a special limitation, in favor of seamen as a class, which is not repealed by the 1924 Act. The Act of 1917 contained a general provision (section 19 (Comp. St. par. 4289¼jj)) governing the deportation of aliens, the provision com-

mon to those who entered while belonging to excluded classes being that they might be deported within five years after entry. That this provision, as it affects all aliens not within the admissible classes, was repealed by section 14 of the Act of 1924 seems clear enough. That repeal, however, in reason and relation, does not affect the special conditions, separately expressed in section 34 of the 1917 law.

"Point is given to this argument that seamen are to be favored under the law when it is considered that the Naturalization Act provides for the admission to citizenship of men who have 'served for three years on board merchant or fishing vessels of the United States' (section 4, subd. 7, Act June 29, 1906, 34 Stat. 596, as amended (Comp. St. par. 4352 (7))), and that after such period of service, and after filing a declaration of intention to become a citizen, such seaman 'shall be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding' (Sub-division 8 (Comp. St. par. 4352 (8))). The privilege of becoming a citizen in such cases seems to depend upon service for the three-year period on American ships only, and is not further conditioned upon a showing that the applicant during such service belonged to a non-excluded class. It may well be assumed that this legislation is cognate with that relating to immigration, for the fixing of a three-year period of service on American ships as a minimum requirement to citizenship, which carries the seaman beyond the deportation period fixed in section 34 referred to, seems hardly a mere coincidence."

At this point, it should be noted that the only charge upon which Mateo Zaja was ordered deported is in substance that he remained in the United States for a longer time than permitted under the Immigration Act of 1924,

or the regulations made thereunder. If it could be shown that Mateo Zaja was permitted to enter the United States under the 1924 Act for any period of time and had overstayed that time, the three-year limitation laid down in Section 34 of the Immigration Act of 1917 (8 U. S. C. 166) would nevertheless apply. But we emphasize the point that in the case at bar, there is no evidence nor contention that Mateo Zaja ever entered pursuant to any of the provisions of the 1924 Act. It is undisputed that he entered the United tSates illegally and unlawfully by deserting a ship and thus surreptitiously gaining an entry into this country. We challenge petitioner to show any provisions of the 1924 Act laying down any particular time within which such an entrant must depart. To be sure, there are certain provisions of the 1924 Act requiring some aliens to depart from this country within certain periods. With regard to seamen, Sections 3, 15 and 19 of the Immigration Act of 1924, must be considered as well as Section 14.

Section 15 (8 U. S. C. 215) provides:

> "The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 3, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States."

Clause 5 of Section 3 (8 U. S. C. 203) there referred to is as follows:

> "When used in this act the term 'Immigrant' means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman. * * *"

Thus, an alien seaman being a non-immigrant is not required to observe the quota and visa provisions of the 1924 Act. Section 19 (8 U. S. C. 166) authorizes the Secretary of Labor to make regulations for the admission of alien seamen and in part provides:

> "No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States."

By virtue of the foregoing provisions, the Secretary of Labor promulgated Immigration Rules of July 1, 1925. Rule 6, subdivision 1, paragraph 1 (set out in full in Petitioner's Brief, p. 23), provides in part:

> "Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country *within three years from the date of landing. . .*" (Italics ours.)

It is, therefore, apparent that the Secretary of Labor in 1925, recognized that regulations affecting alien seamen, promulgated pursuant to the authority conferred upon him by the provisions of the Immigration Act of 1924, were, nevertheless, limited by the provisions of Section 34 of the Act of 1917, and that this Section was not repealed by the Act of 1924.

In fact, the petitioner admits that Section 34 of the 1917 Act was not intended to be repealed by Congress. (Petitioner's Brief, p. 15).

Some decisions have held that the effective date of the 1924 Act is the test and that seamen entering the country after the effective date of the 1924 act entered under that Act. (Rios vs. Day, 24 F. (2d) 654, and later decisions of the Second Circuit.) It is argued by the respondent that an alien seaman does not enter the United States under the Act of 1924 or under any other Act, but enters the country subject to all the Immigration Laws of the United States in force at the time of his entry. At the time of this respondent's entry the laws affecting him were the Immigration Laws of 1917 as modified by the Act of 1924. In fact, the Act of 1924, Section 25, provides that its provisions are, "in addition to and not in substitution for the provisions of the Immigration Laws." It is therefore clear that it is erroneous to say that Section 34 of the Act of 1917 can only affect seamen entering the country prior to the effective date of the 1924 Act.

But, in so far as Mateo Zaja is concerned it is an entirely different matter. He did not enter pursuant to Section 19 of the Act of 1924 or under any regulation of the Secretary of Labor. He was not permitted to enter—he was a deserter. After his entry he never abandoned

his calling as a seaman. In this regard we direct the Court's atention to the opening language of Section 34 of the 1917 Act:

> "That any alien seaman who shall land in a port of the United States *contrary* to the provisions of this act, etc."

Some decisions have held that the limitation applies only to alien seamen coming in contrary to the laws and regulations. This distinction was indicated in the case of *Ex parte Bildt*, 32 Fed. (2d) 894, at page 895, as follows:

> "The language of the 1917 Act is: 'That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody,' etc.
>
> The difficulty of application arises out of the fact that the initial 'landing' of the appellant was not unlawful but pursuant to permission duly given by the immigration officials."

See also:

Cellamare vs. Day, 32 Fed. (2d) 623.

Thus, it would seem that there is a distinction between seamen who are permitted to land temporarily, pursuant to the provisions of Section 19 of the 1924 Act, and seamen who surreptitiously enter the United States. As to the latter class undoubtedly the three year period laid down in Section 34 of the 1917 Act controls.

But we contend that the limitation period applies to all seamen who have entered lawfully or unlawfully and who have remained for more than three years. This question will doubtless be covered thoroughly in the case of

Phillippides vs. Day, Commissioner, now pending before this Court as No. 92, October term, 1930. We will simply indicate several salient points in connection with this theory.

An examination of the Committee Report (House Reports of Congress Nos. 350, 688 and 716, 68th Congress, 22d Session), indicate that Congress did not intend to repeal the provisions of Section 34 of the 1917 Act and that Congress considered that this provision applied to all seamen entering the country.

Furthermore, the codifiers of the 1926 United States Anotated Code, appointed by Congress, in drafting Section 166 of title 8, amalgamated the provisions of Section 34 of the 1917 Act with the provisions of Section 19 of the 1924 Act and provides:

> "No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States. Any alien seaman who shall land in a port of the United States contrary to the provisions of this subchapter shall be deemed to be unlawfully in the United States, and shall, *at any time within three years thereafter,* upon the warrant of the Secretary of Labor be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation provided in section 156 of this title (Acts of February 5, 1917, Chapter 29, Section 34, 39 Stat. 896; May 26, 1924, Chapter 190, Section 19, 43 Stat. 164)."

II.

THE QUESTION INVOLVED ON THIS APPEAL HAS BECOME MOOT.

An examination of the Transcript of Record (page 15) will disclose that the Opinion and Decree of the Circuit Court for the Ninth Circuit was filed on February 17, 1930. Pursuant to the authority vested in that Court by the provisions of Title 28, Section 350, of the United States Code, that Court, by Rule 32 (certified copy of which has been filed with the Clerk of the Supreme Court) provides a thirty day stay of execution before mandate is sent to lower Court.

The Record will further disclose that no petition for further stay of the mandate was ever filed. Therefore, at the expiration of the thirty day period provided for in Rule 32, the Circuit Court of Appeals for the Ninth Circuit issued its mandate to the District Court of the United States, in and for the Southern District of California. That mandate was in due course forwarded to said District Court, spread on its minutes, and Mateo Zaja thereupon duly discharged from custody, as is evidenced by certified copy of the minute order of said Court, also on file with the Clerk of the Supreme Court. (Rule 32 above referred to and certified copy of minute order are set out in Appendix, *infra*, p. 14.)

The judgment and decree of the Circuit Court for the Ninth Circuit was fully carried out. Petitioner, if he had chosen to stay the execution of that judgment could have applied for a further stay of the execution. Having failed to do so, the judgment was executed.

CONCLUSION.

The decree of the Circuit Court of Appeals for the Ninth Circuit should be affirmed and the Writ dismissed.

Respectfully submitted,

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Baltimore, Md.,

J. EDWARD KEATING,
Chapman Building,
Los Angeles, Cal.,
Counsel for Respondent.

APPENDIX.

RULE 32 OF THE RULES OF PRACTICE OF UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

United States Circuit Court of Appeals for the Ninth Circuit.

CERTIFICATE OF CLERK OF U. S. CIRCUIT COURT OF APPEALS TO RULE 32 OF THE RULES OF PRACTICE OF THIS COURT.

I, PAUL P. O'BRIEN, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify that the following is a full, true and correct copy of Rule 32 of the Rules of Practice of this Court, adopted June 27, 1928, and now in full force and effect:

RULE 32.

MANDATE

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo* shall, upon the payment of any costs due in the case, be issued, as of course from this court to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, if not stayed by the order of the court, shall be issued on the expiration of 30 days from the date of such final determination, unless within said time a petition for re-

hearing be filed, in which case the mandate shall be stayed until 5 days after the determination of such petition.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, State of California, this 28th day of October A. D. 1930.

PAUL P. O'BRIEN,

(Seal.) Clerk.

CERTIFIED COPY OF MANDATE OF THE CIRCUIT COURT OF APPEALS, NINTH CIRCUIT, IN THE MATTER OF THE PETITION OF MATEO ZAJA FOR A WRIT OF HABEAS CORPUS.

No. 9630-M.

United States District Court
Southern District of California
Central Division

IN THE MATTER OF THE PETITION OF MATEO ZAJA FOR A WRIT OF HABEAS CORPUS.

Certified Copy of Minute Order 3-24-30 and Mandate.

At a stated term, to wit: The February Term, A. D. 1930 of the District Court of the United States of America, within and for the Central Division of the Southern

District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the 24th day of March, in the year of our Lord one thousand nine hundred and thirty.

Present:

The Honorable Wm. P. James, District Judge.

In the Matter of the Petition Of Mateo Zaja for a writ of Habeas Corpus. } No. 9630-M. Crim.

Upon motion of Theo. E. Bowen, Esq., it is ordered that Mandate of the Circuit Court of Appeals, affirming order of the District Court, be filed and spread upon the minutes of this court, the said Mandate, as filed, being as follows, to-wit:

(Seal)

United States of America, ss:

The President of the United States of America

To the Honorable the Judges of the District Court of the United States for the Southern District of California, Central Division,

GREETING:

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division, before you, or some of you, in the Matter of the petition of Mateo Zaja for a writ of habeas corpus, No. 9630-M Crim., an Order was duly entered on the 9th day of August, A. D. 1929, which said Order is of record and fully set out in said matter in the office of the clerk of the said District Court, to which record reference is hereby

made and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by Walter E. Carr, Director of Immigration of the United States for the Los Angeles District, No. 31, as appellant, against Mateo Zaja, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

AND WHEREAS, on the 12th day of February in the year of our Lord One Thousand Nine Hundred and Thirty the said cause came on to be heard before the said Circuit Court of Appeals on the said Transcript of Record and was duly argued and submitted.

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

(February 17, 1930)

YOU, THEREFORE, ARE HEREBY COMMANDED that such further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable CHARLES EVANS HUGHES Chief Justice of the United States, the 19th day of March, in the year of our Lord One Thousand Nine Hundred and Thirty and of the Independence of the United States of America the One Hundred and Fifty-fourth.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed) No. 6026 United States Circuit Court of Appeals For The Ninth Circuit WALTER E. CARR, District Director of Immigration, etc., vs. MATEO ZAJA, MANDATE No. 9630-M Cr. U. S. District Court, Southern District of California, Central Division, FILED MAR. 24 1930 R. S. ZIMMERMAN, Clerk by Murray E. Wire, Deputy Clerk.

District Court of the United States
Southern District of California
Central Division.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF CALIFORNIA } *ss:*

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing is a full, true, and correct copy of an original minute order made and entered on March 24th, 1930, in the Matter of the Petition of Mateo Zaja for a writ of Habeas Corpus, No. 9630-M Criminal, Central Division, and a full true, and correct copy of Mandate of the Circuit Court of Appeals filed in said case and spread upon the minutes of this court, as the same appears from the original record remaining in my office.

Witness my hand and the seal of said Court, this 27th day of May, A. D. 1930.

R. S. ZIMMERMAN,
(Seal) Clerk.

By Edmund L. Smith,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 125.—October Term, 1930.

Walter E. Carr, Director of Immigration of the United States, for the Los Angeles District No. 31, Petitioner, *vs.* Mateo Zaja.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 23, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

This case raises the same question as No. 92, *supra*, but, as stated in No. 92, was decided the other way by the Circuit Court of Appeals for the Ninth Circuit. Zaja is a Dalmatian, citizen of Jugo-Slavia. He shipped as a seaman upon an Italian ship and on its arrival at San Pedro, California, deserted the ship on January 25, 1925. He was arrested on October 4, 1928, more than three years after his entry, and after a hearing was ordered to be deported on the same ground as in No. 92. He obtained a writ of habeas corpus and was ordered to be discharged from custody. 37 F. (2d) 1016. The judgment must be reversed for the reasons given in No. 92. It is objected that the mandate of the Circuit Court of Appeals was not stayed, but was issued to the District Court and spread upon its records and that therefore the case is finished. But that does not defeat the jurisdiction of this Court. *The Conqueror*, 166 U. S. 110, 113. *Louisville & Nashville R. R. Co.* v. *Bellmore*, 169 U. S. 644, 648. Rule 45.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.